

108TH CONGRESS
2D SESSION

S. 2225

To authorize an exchange of mineral rights by the Secretary of the Interior
in the State of Montana.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2004

Mr. BURNS (for himself, Mr. BAUCUS, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize an exchange of mineral rights by the Secretary
of the Interior in the State of Montana.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Montana Mineral Ex-
5 change Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ANCILLARY FUND.**—The term “Ancillary
9 Fund” means the Northern Cheyenne Ancillary
10 Fund established by section 5(a)(1).

1 (2) ANNUAL 6 PERCENT AMOUNT.—The term
2 “annual 6 percent amount” means the amount from
3 the Permanent Fund that becomes available each
4 Permanent Fund fiscal year for expenditure or obli-
5 gation, as provided in section 5(d).

6 (3) ANNUAL TONNAGE.—The term “annual
7 tonnage” means the total tonnage of merchantable
8 coal mined during a fiscal year from any mine estab-
9 lished after the date of enactment this Act in an ap-
10 proved mine plan area that includes land all or a
11 portion of which is located not more than 25 miles
12 from the boundary of the Northern Cheyenne Res-
13 ervation, as the boundary exists on the date of en-
14 actment of this Act.

15 (4) BASE SUM.—The term “base sum” means
16 the amount equal to the annual tonnage multiplied
17 by 50 cents per ton.

18 (5) CHEYENNE TRACTS.—The term “Cheyenne
19 tracts” means the tracts of land located in the east-
20 ern portion of the State within the boundaries of the
21 Northern Cheyenne Reservation, totaling approxi-
22 mately 5,000 acres, as generally depicted on the
23 map entitled “Cheyenne Coal Land Exchange” and
24 dated January 9, 2004, and that have the following
25 legal descriptions:

1 (A) T. 2 S., R. 44 E., sec. 17.

2 (B) T. 2 S., R. 44 E., sec. 19.

3 (C) T. 3 S., R. 44 E., sec. 5.

4 (D) T. 3 S., R. 44 E., sec. 7.

5 (E) T. 3 S., R. 44 E., sec. 9.

6 (F) T. 3 S., R. 44 E., sec. 17.

7 (G) T. 3 S., R. 44 E., sec. 19.

8 (H) T. 3 S., R. 44 E., sec. 21, N¹/₂SW¹/₄,
9 and S¹/₂SE¹/₄.

10 (6) EXCHANGE.—The term “exchange” means
11 the exchange of mineral rights described in section
12 3(a).

13 (7) FEDERAL TRACTS.—The term “Federal
14 tracts” the unleased tracts of land located in the
15 State of Montana, consisting of approximately 5,000
16 acres, as generally depicted on the map entitled
17 “Cheyenne Coal Land Exchange” and dated Janu-
18 ary 9, 2004, and that have the following legal de-
19 scription:

20 (A) T. 11 N., R. 49 E., sec. 8, S¹/₂.

21 (B) T. 11 N., R. 49 E., sec. 21.

22 (C) T. 11 N., R. 49 E., sec. 27,
23 W¹/₂NW¹/₄.

24 (D) T. 11 N., R. 49 E., sec. 28, NE¹/₄,
25 N¹/₂SE¹/₄, and N¹/₂NW¹/₄.

1 (E) T. 9 S., R. 40 E., sec. 3,
2 SW¹/₄SE¹/₄SE¹/₄, and SW¹/₄SE¹/₄.

3 (F) T. 9 S., R. 40 E., sec. 4, SW¹/₄NW¹/₄.

4 (G) T. 9 S., R. 40 E., sec. 5, S¹/₂NE¹/₄
5 and SE¹/₄.

6 (H) T. 9 S., R. 40 E., sec. 8,
7 NW¹/₄NE¹/₄NE¹/₄ and NW¹/₄NE¹/₄.

8 (I) T. 9 S., R. 38 E., sec. 24, lot 16 and
9 SE¹/₄SE¹/₄.

10 (J) T. 9 S., R. 38 E., sec. 25, lots 9, 12,
11 13, 16, and E¹/₂E¹/₂.

12 (K) T. 9 S., R. 38 E., sec. 36, E¹/₂SE¹/₄.

13 (L) T. 9 S., R. 39 E., sec. 20, lots 1, 2,
14 3, and 4, E¹/₂NW¹/₄, E¹/₂NE¹/₄, SW¹/₄NE¹/₄,
15 E¹/₂SW¹/₄, and SE¹/₄.

16 (M) T. 9 S., R. 39 E., sec. 21,
17 SW¹/₄SW¹/₄.

18 (N) T. 9 S., R. 39 E., sec. 28, W¹/₂NW¹/₄,
19 SW¹/₄, W¹/₂SE¹/₄, and NE¹/₄SE¹/₄.

20 (O) T. 9 S., R. 39 E., sec. 29.

21 (P) T. 9 S., R. 39 E., sec. 32, lots 1, 3,
22 4, 5, 6, and 7, NE¹/₄NW¹/₄, N¹/₂NE¹/₄,
23 SE¹/₄NE¹/₄, NE¹/₄SW¹/₄, and N¹/₂SE¹/₄.

1 (Q) T. 9 S., R. 39 E., sec. 33, lots 1, 2,
 2 3, and 4, NW¹/₄, S¹/₂NE¹/₄, N¹/₂SW¹/₄, and
 3 N¹/₂SE¹/₄.

4 (R) T. 9 S., R. 39 E., sec. 34, lots 1, 2,
 5 3, and 4, N¹/₂SW¹/₄, and N¹/₂SE¹/₄.

6 (8) GREAT NORTHERN PROPERTIES.—The term
 7 “Great Northern Properties” means Great Northern
 8 Properties Limited Partnership, a Delaware limited
 9 partnership, and any successor to the ownership in-
 10 terest of Great Northern Properties in the minerals
 11 underlying the Cheyenne tracts.

12 (9) IMMEDIATELY PRECEDING PERMANENT
 13 FUND YEARS.—The term “immediately preceding
 14 Permanent Fund years” means the 3 Permanent
 15 Fund fiscal years immediately preceding the current
 16 Permanent Fund fiscal year, except that—

17 (A) for the second Permanent Fund fiscal
 18 year, the term means the first Permanent Fund
 19 fiscal year; and

20 (B) for the third Permanent Fund fiscal
 21 year, the term means the first and second Per-
 22 manent Fund fiscal years.

23 (10) INCOME.—The term “income” means the
 24 total net return from the investment of the Perma-
 25 nent Fund or Ancillary Fund, consisting of—

1 (A) all interest, dividends, realized and un-
 2 realized gains and losses and other earnings,
 3 plus all income resulting from the investment of
 4 the income; less

5 (B) any costs and fees for private invest-
 6 ment management, investment consulting, and
 7 custodianship and any other reasonably nec-
 8 essary transactional services or matters.

9 (11) PERMANENT FUND.—The term “Perma-
 10 nent Fund” means the Northern Cheyenne Perma-
 11 nent Fund established by section 5(a)(2).

12 (12) PERMANENT FUND FISCAL YEAR.—The
 13 term “Permanent Fund fiscal year” means a fiscal
 14 year of the Permanent Fund as defined in the Per-
 15 manent Fund plan.

16 (13) PERMANENT FUND PLAN.—The term
 17 “Permanent Fund plan” means the plan established
 18 under section 5(g).

19 (14) SECRETARY.—The term “Secretary”
 20 means the Secretary of the Interior.

21 (15) TRAILING AVERAGE PERMANENT FUND
 22 VALUE.—The term “trailing average Permanent
 23 Fund value” means the average quarterly market
 24 value of the Permanent Fund during the imme-
 25 diately preceding Permanent Fund years.

1 (16) TRIBE.—The term “Tribe” means the
2 Northern Cheyenne Tribe.

3 **SEC. 3. MINERAL RIGHTS EXCHANGE.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of Federal law, concurrent with the conveyance from
6 Great Northern Properties to the United States of all of
7 its mineral interests underlying the Cheyenne tract, the
8 Secretary shall convey to Great Northern Properties all
9 mineral interests in the Federal tracts.

10 (b) TRUST.—On conveyance of the mineral interests
11 underlying the Cheyenne tracts to the United States, the
12 Secretary shall take the mineral interests into trust for
13 the benefit of the Tribe.

14 **SEC. 4. TERMS AND CONDITIONS OF EXCHANGE.**

15 (a) WAIVER OF LEGAL CLAIMS.—In return for the
16 exchange, the Tribe shall waive any and all claims relating
17 to the failure of the United States to previously acquire
18 in trust for the Tribe as part of the Northern Cheyenne
19 Reservation the private mineral interests underlying the
20 Cheyenne tracts.

21 (b) CONDITION.—As a condition precedent of the ex-
22 change, the Tribe and Great Northern Properties shall
23 jointly notify the Secretary in writing that they have
24 agreed on a formula for the sharing of revenue from coal
25 produced from any portion of the Federal tracts.

1 (c) COMPLETION OF EXCHANGE.—Notwithstanding
 2 any other provision of law, after satisfaction of the condi-
 3 tion precedent specified in subsection (b), the exchange
 4 shall be completed in a single transaction not later than
 5 90 days after the date on which the Secretary receives no-
 6 tice under subsection (b).

7 (d) RESCISSION OF EXCHANGE.—If a portion of the
 8 completed exchange is invalidated by a court of competent
 9 jurisdiction and the judgment of the court is no longer
 10 subject to appellate review, the Secretary or Great North-
 11 ern Properties may rescind the entire exchange.

12 **SEC. 5. NORTHERN CHEYENNE PERMANENT FUND AND**
 13 **NORTHERN CHEYENNE ANCILLARY FUND.**

14 (a) ESTABLISHMENT.—There are established in the
 15 Treasury of the United States—

16 (1) a fund to be known as the “Northern Chey-
 17 enne Permanent Fund”; and

18 (2) a fund to be known as the “Northern Chey-
 19 enne Ancillary Fund”.

20 (b) AUTHORIZATION OF APPROPRIATIONS TO
 21 FUNDS.—There are authorized to be appropriated—

22 (1) to the Permanent Fund \$10,000,000 for
 23 each of fiscal years 2005, 2006, and 2007; and

24 (2) to the Ancillary Fund \$10,000,000 for each
 25 of fiscal years 2008, 2009, 2010, and 2011.

1 (c) TRANSFERS FROM ANCILLARY FUND TO PERMA-
2 NENT FUND.—

3 (1) IN GENERAL.—Not later than 120 days
4 after the end of fiscal year 2008 and each subse-
5 quent fiscal year in which amounts in the Ancillary
6 Fund are available for transfer to the Permanent
7 Fund, the Secretary of the Treasury shall transfer
8 from the Ancillary Fund to the Permanent Fund an
9 amount, as determined by the Secretary, equal to—

10 (A) the base sum; plus or minus

11 (B) any accrued realized and undisbursed
12 income or any accrued realized loss in the An-
13 cillary Fund as of the end of the fiscal year, in
14 an amount not to exceed the base sum.

15 (2) WRITTEN STATEMENT.—As soon as prac-
16 ticable after a transfer under paragraph (1), the
17 Secretary of the Treasury shall provide to the
18 Tribe—

19 (A) a written statement describing—

20 (i) the amount transferred under
21 paragraph (1); and

22 (ii) how the amount was calculated;
23 and

24 (B) copies of any written materials used to
25 determine the amount.

1 (d) EXPENDITURES FROM PERMANENT FUND.—

2 (1) IN GENERAL.—Beginning with the second
 3 Permanent Fund fiscal year and during each subse-
 4 quent Permanent Fund fiscal year, the Tribe may
 5 expend or obligate not more than 6 percent of the
 6 trailing average Permanent Fund value (plus, during
 7 each Permanent Fund fiscal year subsequent to the
 8 second Permanent Fund fiscal year, the amount of
 9 any unexpended and unobligated portion of the an-
 10 nual 6 percent amount from any of the immediately
 11 preceding Permanent Fund years, not including any
 12 income that may accrue on that portion) only for the
 13 following purposes:

14 (A) Education.

15 (B) Law enforcement.

16 (C) Any other tribal governmental services
 17 or facilities.

18 (D) Economic development.

19 (E) Acquisition of land, water rights, or
 20 related property interests.

21 (F) Payment of costs and fees incurred in
 22 connection with the investment of the Perma-
 23 nent Fund for private investment management,
 24 investment consulting, custodianship, and any

1 other reasonably necessary transactional serv-
2 ices or matters.

3 (2) NO OTHER EXPENDITURES FROM PERMA-
4 NENT FUND.—No amounts from the Permanent
5 Fund may be expended or obligated—

6 (A) for the purpose of making per capita
7 payments to members of the Tribe or litigating
8 against any aspect of any proposed or existing
9 off-Reservation coal mining, oil or gas develop-
10 ment, or electric power generation project; or

11 (B) for any other purpose other than a
12 purpose authorized in paragraph (1).

13 (e) COMPLIANCE WITH PERMANENT FUND PLAN.—
14 The Tribe shall invest, manage, disburse, and expend the
15 amounts in the Permanent Fund for the purposes de-
16 scribed in subsection (d)(1) in accordance with the Perma-
17 nent Fund plan.

18 (f) INVESTMENT THROUGH SECRETARY.—

19 (1) IN GENERAL.—As requested by the Tribe,
20 the Secretary shall invest any portions of the Perma-
21 nent Fund and the Ancillary Fund in interest-bear-
22 ing deposits and securities in accordance with—

23 (A) the Act of April 1, 1880 (21 Stat. 70,
24 chapter 41; 25 U.S.C. 161); and

1 (B) the Act of June 24, 1938 (25 U.S.C.
2 162a).

3 (2) INCOME.—

4 (A) PERMANENT FUND.—All income
5 earned on investments in the Permanent Fund
6 shall be deposited in the Permanent Fund.

7 (B) ANCILLARY FUND.—All income earned
8 on investments in the Ancillary Fund shall be
9 deposited in the Ancillary Fund.

10 (g) DEVELOPMENT OF PERMANENT FUND PLAN.—

11 (1) IN GENERAL.—The Tribe shall—

12 (A) develop a Permanent Fund plan, in
13 consultation with the Secretary, for the invest-
14 ment, management, administration, and ex-
15 penditure of the amounts in the Permanent
16 Fund; and

17 (B) submit the plan to the Secretary.

18 (2) CONTENTS.—The Permanent Fund plan—

19 (A) shall set forth the manner in which
20 amounts in the Permanent Fund shall be man-
21 aged, administered, and expended for the pur-
22 poses described in subsection (d)(1); and

23 (B) may provide for investment manage-
24 ment of all or any portion of the Permanent

1 Fund by qualified private professional invest-
 2 ment managers.

3 (3) REVISION.—The Permanent Fund plan may
 4 be revised and updated by the Tribe, in consultation
 5 with the Secretary.

6 (h) FEDERAL DISBURSEMENTS.—

7 (1) IN GENERAL.—Notwithstanding any other
 8 provision of Federal law, while the Permanent Fund
 9 or any portion of the Permanent Fund is invested by
 10 the Secretary under subsection (f), on request of the
 11 Tribe, the Secretary of the Treasury and the Sec-
 12 retary shall make available to the Tribe, amounts in
 13 the Permanent Fund to be used—

14 (A) for any of the purposes set forth in
 15 subsection (d)(1); or

16 (B) as may be provided in the Permanent
 17 Fund plan under subsection (g)(2)(B), to en-
 18 able submission of all or any portion of the Per-
 19 manent Fund to private professional investment
 20 management.

21 (2) EXCEPTION.—No amounts shall be made
 22 available to the Tribe under paragraph (1) until the
 23 Tribe adopts the Permanent Fund plan required by
 24 subsection (g).

1 (i) **ENFORCEMENT.**—The Secretary may take any ju-
2 dicial or administrative action to enforce the provisions of
3 the Permanent Fund plan that is necessary to ensure that
4 any amount withdrawn from the Permanent Fund is used
5 in accordance with this Act.

6 (j) **LIABILITY.**—If the Tribe exercises the right to
7 withdraw an amount from the Permanent Fund, neither
8 the Secretary nor the Secretary of the Treasury shall re-
9 tain any liability for the expenditure or investment of the
10 amount withdrawn.

11 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

12 In addition to the amounts authorized to be appro-
13 priated to the Permanent Fund and Ancillary Fund under
14 section 5(b), there are authorized to be appropriated such
15 sums as are necessary to carry out this Act.

○